

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re:

NEW SEABURY COMPANY
LIMITED PARTNERSHIP,

Debtor.

NEW SEABURY PROPERTIES, LLC,

Appellants,

v.

NEW SEABURY COMPANY
LIMITED PARTNERSHIP

Appellee.

Case No. 97-12964-WCH
Chapter 11

Bankruptcy Appeal
Civil Action No. 04-11981-DPW

STATEMENT OF ISSUES ON CROSS-APPEAL

New Seabury Properties, LLC (“NSP”) hereby files its Statement of Issues to be presented on cross-appeal. Specifically, the issues to be presented are as follows:

1. Whether the United States District Court of Massachusetts (“District Court”) erred in entering the Order of Dismissal stated March 23, 2005 (the “Dismissal Order”).
2. Whether the District Court erred in affirming its holding in its Memorandum and Order dated March 5, 2004 (“March 5, 2004 Order”) that the unambiguous language of the Stipulation Relating to Competing Plans of Reorganization, Objections to Confirmation, Motion for Reconsideration and Motion for Plan Modification (“the Stipulation”) executed by NSP and New Seabury Company Limited Partnership (“the Debtor”) on May 29, 1998 permitted the Debtor to retain some of the funds in the general operating account.
3. Whether the District Court erred in holding that the Stipulation permitted the Debtor to retain some of the funds in the general operating account because the loss resulting from the Stipulation’s silence on the Debtor’s entitlement to the funds in the general operating account should lie with NSP due to NSP’s superior bargaining position when negotiating the language of the Stipulation.
4. Whether the District Court erred in its March 5, 2004 Order in affirming its Memorandum and Order dated October 21, 1999 (“October 21, 1999 Order”) in which it

held that the unambiguous language of the Stipulation entitled the Debtor to retain some of the funds in the general operating account.

5. Whether the District Court erred in its October 19, 1999 Order in reversing the decision of the United States Bankruptcy Court, District of Massachusetts, Eastern Division (“Bankruptcy Court”) that NSP was entitled to retain all of the funds in the general operating account.

Respectfully submitted,

NEW SEABURY PROPERTIES, LLC, *et al.*
By their attorneys,

/s/ Daniel E. Rosenfeld
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